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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,952	02/27/2002	Dustin Kirkland	AUS920020019US1	5349
35525	7590	09/21/2005	EXAMINER	
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			NGUYEN, CINDY	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,952

Applicant(s)

KIRKLAND, DUSTIN

Examiner

Cindy Nguyen

Art Unit

2171

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-7, 10-26, 29-37 and 39-43 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3, 5-7, 10-20, 21-26, 29-37, 39-43 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 27 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is in response to communication filed 09/07/05.

#### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claims 1, 25 and 42, there is unclear that "a third estimate" and "the third estimate" are the same estimate or they are difference estimates. Correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-7, 10-14, 16-20, 22-26, 29-33, 35-37, 39-43 rejected under 35 U.S.C. 102(e) as being anticipated by Chmaytelli et al. (US 20020194325) (Chmaytelli).

Regarding claims 1, 25 and 42, Chmaytelli discloses: a method, a computer program product and an apparatus for generating an estimate of an amount of time required to complete a content request for content to be transmitted over a network, comprising: receiving a first estimate of an amount of time to retrieve or prepare requested content in a content source device (paragraphs 0047, 0051, Chmaytelli) wherein the first estimate includes a minimum, maximum and average amount of time to retrieve or prepare the requested content (paragraphs 0069, 0071, Chmaytelli);

generating a second estimate of an amount of time to receive the requested content over a communication link from the content source device (paragraphs 0054);

generating a third estimate of a total amount of time to complete the content request based on the first and second time estimates wherein the third estimate includes a minimum, maximum and average amount of time to retrieve or prepare the requested content (paragraphs 0056, 0069, 0071, Chmaytelli).

generating a graphical representation of the third estimate wherein the graphical presentation includes an indicator for each of the minimum, maximum and average time of completion for the content request (paragraphs 0060, 0063, 0069, 0071, 0063, 0082, Chmaytelli); and outputting the graphical representation on a display device (paragraphs 0060, 0063, Chmaytelli).

Regarding claims 19, 36 and 43, all the limitations of this claim have been noted in the rejection of claim 1, 25 and 42. It is therefore rejected as set forth above. In addition, Chmaytelli discloses: a method, a computer program product and an

apparatus for generating an estimate of an amount of time required to retrieve or prepare requested content, comprising: receiving a request for content (paragraphs 0051, Chmaytelli), the request including one or more parameters (paragraphs 0051, Chmaytelli); identifying previously completed request information regarding a previously completed request based on the one or more parameters, the information including a time required to retrieve or prepare the content of the previously completed request (paragraphs 0051-0054, Chmaytelli).

Regarding claims 2, 20 and 37, all the limitations of these claims have been noted in the rejection of claims 1, 19 and 36 above, respectively. In addition, Chmaytelli discloses: wherein the first estimate is generated using a table lookup of previously handled content requests (paragraphs 0051-0052, 0071, Chmaytelli).

Regarding claim 3, all the limitations of this claim have been noted in the rejection of claim 2. In addition, Chmaytelli discloses: wherein the table lookup includes finding one or more entries in a table that have parameters similar to parameters included in the content request (paragraphs 0051-0052, Chmaytelli).

Regarding claim 5, all the limitations of this claim have been noted in the rejection of claim 1. In addition, Chmaytelli discloses : wherein the first estimate is generated based on information identifying the processes used to retrieve or prepare the requested content (paragraphs 0051-0052, 0061, Chmaytelli)).

Regarding claim 6, all the limitations of this claim have been noted in the rejection of claim 5. In addition, Chmaytelli discloses : wherein the information includes at least one of an identifier of a program to be used to retrieve or prepare the requested content (paragraphs 0056-0059, Chmaytelli), a typical execution time for the program a number of lines of code in the program, and a number of lines of code per second handled by a processor of the content source device (paragraphs 0074-0075, Chmaytelli).

Regarding claims 7 and 26, all the limitations of these claims have been noted in the rejection of claims 1 and 25 above, respectively. In addition, Chmaytelli discloses : wherein the second estimate is generated based on an amount of content to be transmitted and a transmission rate (paragraphs 0071, Chmaytelli).

Regarding claims 10 and 29, all the limitations of these claims have been noted in the rejection of claims 1 and 25 above, respectively. In addition, Chmaytelli discloses: wherein the graphical representation includes associated text, and wherein the associated text is changed from a first text to a second text when the requested content begins to be received from the content source device (paragraphs 0063, Chmaytelli).

Regarding claims 11 and 30, all the limitations of this claim have been noted in the rejection of claims 1 and 25 above, respectively. In addition, Chmaytelli discloses: further comprising: updating the graphical representation based on the occurrence of an event (paragraphs 0063, Chmaytelli).

Regarding claims 12 and 31, all the limitations of these claims have been noted in the rejection of claims 11 and 30 above, respectively. In addition, Chmaytelli discloses: wherein the event is an increment of a predetermined amount of time of a system clock (paragraphs 0063, Chmaytelli).

Regarding claims 13 and 32, all the limitations of these claims have been noted in the rejection of claims 11 and 30 above, respectively. In addition, Chmaytelli discloses: wherein the event is receipt of a portion of the requested content (paragraphs 0063, Chmaytelli).

Regarding claims 14 and 33, all the limitations of these claims have been noted in the rejection of claims 1 and 25 above, respectively. In addition, Chmaytelli discloses: wherein the graphical representation represents the third estimate as a combination of the first estimate and the second estimate, wherein a representation of the first estimate in the graphical representation is different from a representation of the second estimate in the graphical representation (paragraphs 0061, 0063, Chmaytelli).

Regarding claims 16 and 35, all the limitations of this claim have been noted in the rejection of claims 1 and 25 above, respectively. In addition, Chmaytelli discloses: wherein the graphical representation is a progress bar (paragraphs 0060, Chmaytelli).

Regarding claims 17, all the limitations of this claim have been noted in the rejection of claim 1. In addition, Chmaytelli discloses: wherein the method is implemented by a web browser application on a computing device (paragraphs 0059-0060, Chmaytelli).

Regarding claims 18, all the limitations of this claim have been noted in the rejection of claim 1. In addition, Chmaytelli discloses: wherein the method is implemented by a plugin application to a web browser application on a computing device (paragraphs 0063, Chmaytelli).

Regarding claims 22 and 39, all the limitations of this claim have been noted in the rejection of claims 19 and 36 above, respectively. In addition, Chmaytelli discloses: wherein generating a time estimate of an amount of time required to retrieve or prepare the requested content includes generating the time estimate based on a time to retrieve or prepare content identified in the previously completed request information, a system load at the time of the previously completed request, and a current system load (paragraphs 0052, Chmaytelli).

Regarding claims 23 and 40, all the limitations of this claim have been noted in the rejection of claims 20 and 37 above, respectively. In addition, Chmaytelli discloses: further comprising: storing a new entry in the previously handled content request table for the request for content (paragraphs 0052-0054, Chmaytelli).

Regarding claims 24 and 41, all the limitations of this claim have been noted in the rejection of claims 19 and 36 above, respectively. In addition, Chmaytelli discloses: further comprising: transmitting the time estimate to a client device (paragraphs 0048-0051, Chmaytelli).



The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chmaytelli et al. (US 5657450) (Chmaytelli) in view of Ording (U.S 2001/0055017).

Regarding claims 15 and 34, all the limitations of these claims have been noted in the rejection of claims 14 and 33 above, respectively. However, Chmaytelli didn't disclose: wherein the first estimate is represented in a different color than the second estimate. On the other hand, Ording discloses: : wherein the first estimate is represented in a different color than the second estimate (page 3, paragraph 0021, Ording). Thus, at the time invention was made, it would have been obvious to a person of ordinary skill in the art to include the step where the first estimate is represented in a different color than the second estimate in the system of Chmaytelli as taught by Ording. The motivation being to enable the system provide the pattern in the progress bar that can be varied such that it changes colors over time or it could vary through a progression of gray scale patterns to display the percentage of the content download completed and the time remaining in the progress bar.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 571-272-4025. The examiner can normally be reached on M-F: 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 571-272-4023. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Cindy Nguyen

September 15, 2005

  
**FRANTZ COBY**  
**PRIMARY EXAMINER**